

**NEVADA DEPARTMENT OF AGRICULTURE
VIRGINIA RANGE COOPERATIVE AGREEMENT**

This Cooperative Agreement (hereinafter "Agreement") is made between Return to Freedom, Inc., a foreign non-profit corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Lompoc, California and licensed to do business in the State of Nevada (hereinafter RTF), and the Nevada Department of Agriculture (hereinafter NDA).

RECITALS

WHEREAS, in the 2013 Legislative Session, A.B. 264 was enacted which permitted NDA to enter into cooperative agreements with non-profit organizations to develop procedures and policies for the management, control, placement or disposition of feral and estray horses inhabiting the lands commonly known as the Virginia Range Area ("VRA");

WHEREAS, NDA has management responsibilities under NRS Chapter 569 over the Virginia Range estray/feral horses (hereinafter VRE/FHs) and, pursuant to the provisions of NRS 561.218, the Director of NDA shall designate a manager or agent (hereinafter "Manager") to enter into any cooperative agreements for these purposes on behalf of NDA with any organization, individual or legal entity;

WHEREAS, RTF represents that it maintains legally binding agreements between itself, as principal, and certain designated individuals and/or non-profit organizations who shall carry out any activities, obligations or duties set forth in this agreement as agents on behalf of the principal RTF;

WHEREAS, NDA, RTF and the individuals and organizations working with RTF, recognize the historical significance of the VRE/FHs in this areas and desire to bring about and implement an effective management agreement(s) for the benefit of the horses and environment;

WHEREAS, the Parties acknowledge the need to review and address the ecological sustainability of the VRA, and recognize that horse populations are not the sole obligates of the VRA nor should the VRA be managed as such;

WHEREAS, the Parties recognize that reduction of VRE/FH population numbers ultimately will benefit the health of VRE/FHs as well as the ecological balance of the VRA; and

WHEREAS, the Parties acknowledge the need to cooperate in the development of strategies and practices to manage the VRE/FHs, with the goal of protecting public safety and reducing the population through the administration of fertility control measures, facilitating adoption and private placements; and implementing strategies to further reduce the number of human/horse conflicts, thereby improving public safety, the ecological balance of the VRA, and the health of horse populations.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement and in furtherance of NRS 569.031, the following definitions shall apply:

- 1.1. "Virginia Range Area" (VRA) shall be defined as that area contained by the following borders, roads and/or landmarks, which include the I-80 as the North boundary, Highway 95A as the East Boundary, Highway 50 as the South Boundary and (old) Highway 395 as the Western Boundary, more specifically set forth in the attached Map (Attachment 1).
- 1.2. "Feral Livestock" shall have the meaning as defined in NRS 569.008 and NRS 569.010.
- 1.3. "Estray" shall have the meaning as defined in NRS 569.0075 and NRS 569.010;
- 1.4. "Livestock" shall have the meaning as defined in NRS 569.0085.
- 1.5. "Private lands" shall mean real property owned by any individual, partnership, corporation, or other similar legal entity.
- 1.6. "State lands" shall mean lands which are currently, by law, under the operation, control, and/or management of the State of Nevada or a Nevada state agency.
- 1.7. "Public lands" shall have the meaning as defined in NRS 408.078.
- 1.8. "Federal lands" shall mean lands which are currently owned or managed by the federal government and under the jurisdiction of any federal agency or entity.
- 1.9. "Standard Operating Procedures" (SOPs) shall mean a set of written instructions approved by NDA that documents a routine or activity to be followed the NDA or RTF in concert with this Agreement.
- 1.10. "Legal fence" shall have the meaning as defined in NRS 569.431.
- 1.11. "Improved Road" or "Paved Road" shall have the meaning of an interstate highway, freeway, expressway, principal arterial, minor arterial, major collector, minor collector, or paved local roads as defined by the Nevada Department of Transportation. This definition shall not include unpaved or graded dirt roadways or trails.
- 1.12. "Trapping" shall mean any intentional action by either NDA or RTF resulting in the confinement of any number of VRE/FHs into holding pens, trailers or corrals.
- 1.13. "Diversionary feeding" shall mean providing food or nourishment to the VRE/FHs to encourage them to relocate to specific areas for purposes of implementing fertility control measures, trapping or public safety in accordance with RTF's SOPs.
- 1.14. "Encroachment area" in the context of an urban setting, shall mean the natural, undeveloped or vacant land immediately surrounding an urban area or developed areas containing works of improvements (e.g. improved or paved roads, landscaping, or public, residential or commercial structures).

- 1.15. "Fertility Control Measures" (FCM) shall mean established and recognized protocol and procedures for the administration of porcine zona pellucida (PZP) or similar variants approved by NDA, that reduce conception rates in horses utilizing recognized and approved delivery methods.

2. OBJECTIVE, SCOPE & DURATION OF THE AGREEMENT

- 2.1. This Agreement shall establish policies and procedures to address the management and/or disposition of the VRE/FHs in the VRA for the purpose of reducing the VRE/FH population so as to improve VRA rangeland and VRE/FH population health, to reduce conflicts involving horses and citizens, protect private and public property, and to remediate public safety issues.
- 2.2. This Agreement shall govern only stray and feral horses found within or strayed from the boundaries of the VRA as described in Definition 1.1.
- 2.3. This Agreement becomes effective when fully executed by all Parties hereto and shall remain in full force and effect until terminated by either party upon 30 days written notice pursuant to Section 9.3 "Cancellation" of this Agreement, or until the end of five years from the effective date of this Agreement.
- 2.4. This Agreement does not replace or supersede the previous Cooperative Agreement entered into on March 13, 2013.
- 2.5. This Agreement shall not pertain to, nor involve, any animals under the jurisdiction of the Federal Government pursuant to the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. Section 1331 to 1340, inclusive, and any regulations adopted pursuant thereto or any other federal statute or regulation. This agreement does not in any way address, limit or forbid that RTF and/or its cooperators separately assist or work with federal agencies, Tribal Nations and other affected agencies.

3. MUTUAL OBLIGATIONS OF THE PARTIES

- 3.1. The Parties agree to designate one person to act as the Point of Contact (POC) for purposes of providing notice, as follows:

RTF Name: _____
 Title: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____
 Email: _____

NDA Manager Name: _____
 Title: _____
 Address: _____
 City: _____ State: _____ Zip: _____

Telephone: _____
Email: _____

The Parties agree to promptly notify each other in writing of any changes to the POC and/or their contact information.

- 3.2. The Parties agree to use their best efforts, act in good faith, and maintain open and ongoing communication with the other in a constructive and professional manner.
- 3.3. The Parties, through their respective POCs, agree to participate not less than quarterly in meetings to review issues, discuss any needs, evaluate and refine performance standards and benchmarks, obtain approvals as required, and make recommendations to improve this Agreement and the stated objectives.
- 3.4. Within 12 months from when this Agreement becomes effective, and consistent with NDA's duties set forth in NRS 561.218(2)(a) and (b), NDA and RTF agree to collaborate to provide, assemble and share data for use in the preparation of a multi-disciplinary rangeland and resource management plan that will help inform performance objectives, establish appropriate herd population numbers and evaluate the overall condition of the VRA ecosystem.
 - 3.4.1. Subject to paragraph 9.1, costs to develop a population and resource management plan and to conduct any range resource inventories and assessments, if any are incurred, shall be borne by the NDA; in the event that RTF wishes to engage additional or different Parties or organizations as part of this plan, RTF shall bear any associated costs.

4. OBLIGATIONS OF RTF

- 4.1. No later than three (3) months from the execution of this Agreement, and prior to undertaking any activities on the VRE pursuant to this Agreement, RTF agrees to provide to NDA SOPs that address any activities which will be undertaken pursuant to this Agreement by RTF or its agents, including, but not limited to procedures to implement any trapping, diversionary feeding, FCMs, and protocol for responding to complaints or calls. Further, SOPs shall include specific performance measures that demonstrate how RTF activities undertaken pursuant to this Agreement – including, but not limited to, FCMs – are intended to achieve overall VRE/FH population goals.
- 4.2. RTF agrees to maintain an insurance policy throughout the duration of this Agreement, listing the State of Nevada, its officers and employees as additional insureds, in the minimum sum of one million dollars to cover any claims, damages or injuries to persons or property, which may arise during the pendency of this Agreement. RTF and its agents, volunteers and employees, further agree to indemnify, defend and hold harmless the State of Nevada, from any damages, claims, or injuries which may arise related to or in furtherance of this Agreement. If this insurance at any time lapses, RTF shall immediately notify NDA and cease any activities under this Agreement. RTF shall provide or require insurance coverage for any participants under this Agreement to cover any claims, damages or injuries to any persons or property which may arise during the pendency of this Agreement.
- 4.3. Pursuant to NRS 569.031, RTF agrees to provide a year-end report to NDA setting forth all data collection, summary of activities, including but not limited to, efforts to administer

and track mares receiving birth control, relocation and fencing activities, SOPs, training of persons participating under this Agreement, after action reports (AARs), instances of feeding, year-end results of performance objectives and any recommendations or amendments to this Agreement.

- 4.4. Any actions undertaken by RTF or its agents involving responses to citizen complaints, fencing, implementing diversionary feeding or fertility control measures shall be in accordance with approved SOPs and followed by an AAR documenting and summarizing the activities of any responders. RTF shall notify NDA of any complaints from the public or other entities pertaining to the VRE/FHs as soon as possible but not more than one (1) business day after receipt, in accordance with approved SOPs; complainants may remain anonymous upon request.

5. OBLIGATIONS OF NDA

- 5.1. In accordance with approved SOPs, NDA shall notify RTF, ~~either telephonically or through electronic mail,~~ [cth1] as soon as possible but not more than one (1) business day after the conclusion of any trapping and removal of VRE/FHs conducted by NDA. NDA shall also notify RTF as soon as possible but not more than one (1) business day after receiving any complaints from the public or other entities pertaining to VRE/FHs; complainants may remain anonymous upon request. NDA shall endeavor to report the number, condition and the sex of the horse(s) trapped and removed as possible. [cth2]
- 5.2. NDA shall promptly review all RTF requests for approval or permission for fencing, trappings, FCMs, or implementation of diversionary feeding or other public safety interventions, and provide written response within three (3) business days. NDA may grant the request, deny the request with explanation, or grant a request with modifications.
- 5.3. Concurrent with the execution of this Agreement, NDA shall provide a permission or authorization form for use by RTF when seeking permission to conduct activities on private property or areas subject to livestock grazing permits.

6. TRAPPING, ADOPTION OR RELOCATION

- 6.1. The Parties recognize that trapping may be required as a result of an emergency condition, citizen or public agency complaint(s), or for planned activities that may be authorized by NDA such as the implementation of fertility control measures. The Parties acknowledge that this Agreement does not operate to limit NDA's statutory management authority or powers for the VRE/FHs except as specifically provided for herein.
- 6.2. RTF may trap, remove, relocate VRE/FHs only after first obtaining the approval of NDA and in accordance with approved SOPs, unless an urgent public safety condition exists and certain factors are met as explained in 6.2.3.
 - 6.2.1. Any VRE/FHs so removed by RTF or its agents shall be subject to either relocation to lands approved by NDA and the appropriate entity or individual which controls said lands or shall be placed in accordance with the previous Cooperative Agreement, with a finalized date of March 13, 2013 (hereinafter the "3-2013 Cooperative Agreement").
 - 6.2.2. The 3-2013 Cooperative Agreement is hereby modified as followed:

Reduced Purchase Price: If NDA authorizes RTF to conduct a Trapping and removal pursuant to this section, and RTF utilizes its own resources to remove, transport, house, feed and treat any VRE/FH, NDA shall, after compliance with the requirements of NRS 569.070-.080, sell any unclaimed VRE/FH to RTF for the

sum of \$0.00 (zero) dollars. RTF shall pay the costs for castration and other agreed upon expenses.

- 6.2.3. When an urgent public safety condition exists as described in 8.1.1 and officials having statutory responsibility for public safety determine that immediate action is warranted for the protection of public safety, and upon determination made in accordance with SOPs that NDA personnel or resources are not available to respond in a timely manner, the RTF may trap, remove or relocate the relevant VRE/FHs to resolve the urgent public safety threat. Any failure to adequately resolve or mitigate such threat in accordance with applicable laws, this agreement, and SOPs shall not subject RTF to any liability.

7. FERTILITY CONTROL MEASURES

- 7.1. RTF proposes and agrees to implement humane fertility control measures (FCMs) to reduce the VRE/FH population in accordance with approved SOPs. Both Parties acknowledge that for FCMs to be effective, they must be administered according to industry best practices, including unique identification and documentation of mares receiving treatment in order to facilitate consistent treatment.
- 7.2. Performance goal and measures: Both Parties acknowledge the need for clear goals and measures in order to understand the efficacy of efforts and to inform adaptive management. Both Parties acknowledge that these numbers may be revised as necessary.
- 7.2.1. RTF has set as its goal to treat the following number of mares per year:
- Year 1: At least 150 mares
 - Year 2: At least 250 mares
 - Year 3: At least 400 mares
 - Year 4: At least 550 mares
 - Year 5: At least 750 mares
- 7.2.2. The objective of these treatments is that at least seventy-five percent (75%) of mares treated under the approved FCMs do not produce foals in the foaling period in which the treatment should have prevented conception.

8. PUBLIC SAFETY

- 8.1. The Parties agree to the following public safety incident categories relating to VRE/FHs, corresponding management actions, and response times. The parties agree to establish baseline criteria for number of horse incidents (e.g. safety concerns, accidents, etc.) as described in the following categories where management activity is conducted. The initial objective shall be the reduction of such incidents by a minimum of a fifty percent (50%) from the respective baseline.
- 8.1.1. Category 1 – Urgent – Requires immediate removal of horses; determined by NDA and/or state, tribal or local law enforcement; RTF shall be notified as soon as possible but no later than one (1) business day.
- 8.1.2. Category 2 – Priority – Potential public safety issue; if no immediate public safety concern identified by local law enforcement, NDA notifies RTF to assist in implementing diversionary feeding, relocation and identification of possible issues (e.g. failed fencing, illegal feeding, etc.); RTF or NDA, as appropriate, notified within one (1) business day.

- 8.1.3. Category 3 – Preventative – RTF will survey, consistent with approved SOPs, respective areas for potential Category 1 and/or 2 situations. Prioritize Category 3 situations to utilize available resources to minimize or prevent future Category 1 or 2 situations; RTF or NDA, as appropriate, notified within three (3) business days.
- 8.2. The RTF may implement fencing projects and/or repairs to help manage and control VRE/FHs on the VRA in accordance with the established SOPs.
 - 8.2.1. Cost for such repairs and/or the installation of fencing shall be borne by RTF and/or its agents, and/or the agency or entity requesting the construction of said fencing. NDA shall not incur any financial obligation for any such project unless explicitly agreed to in writing by an authorized NDA representative.
- 8.3. This Agreement shall not be construed as a delegation of any statutory duties of NDA that are mandated by NRS 569, *et seq.* concerning feral and estray horses. NDA shall retain its full authority to manage and control any property of the Department and to respond to citizen complaints or calls involving horses in urban areas and all emergency situations. The responsibility for ensuring public safety shall lie exclusively with NDA and local law enforcement.
- 8.4. Both Parties agree to engage in ongoing collaboration to reasonably pursue methods that may improve the public awareness concerning horse and public safety issues, and reduce human-horse incidents, including but not limited to placement of additional signage, lights, fencing, and promoting public education campaigns to deter inappropriate, unnatural or undesirable interactions between humans and VRE/FHs, subject to funding, staff and resource limitations.

9. GENERAL PROVISIONS

- 9.1. Any costs incurred by RTF incurred in the performance of this agreement shall be chargeable to NDA only if NDA has given prior express approval by executing a contract or other obligating document. Unless otherwise specified in this agreement or provided for by contract or other obligating document, costs incurred by each party shall be borne by that party.
- 9.2. Indemnity and Insurance: As required pursuant to NRS 569.031(5), RTF, its agents, assigns and all persons acting in concert with RTF on activities set forth herein, agree to indemnify, defend and hold harmless the State of Nevada from any claim or liability arising from any act or omission of the cooperating person(s) or entity arising from this Agreement, and agree that all volunteers shall have appropriate and sufficient insurance to address any claims, injuries, or damages that may arise under this Agreement. Proof of insurance covering RTF, its agents and any activities to be carried out under this Agreement shall be a condition precedent to any obligation or duty by NDA.
- 9.3. Cancellation: This agreement may be canceled by either party without cause upon thirty (30) days written notice to the other party. Further, pursuant to NRS 569.031, NDA may cancel this Agreement upon finding that RTFs actions are noncompliant with the Agreement. Any Notice of Cancellation may only be revoked in writing upon delivery to the other party. Neither party shall incur any liability absent a finding of malfeasance or willful misconduct.
- 9.4. Warranties: Neither party makes any warranties nor promises, express or implied, with respect to the management and control of horses on the range except as set forth herein.
- 9.5. Choice of Law: Should any dispute arise concerning the terms and conditions herein, the Parties agree that this agreement shall be interpreted according the laws of the State of

Nevada, and the Parties further consent to the exclusive jurisdiction in the Second Judicial District in Washoe County, Nevada for any enforcement or interpretation of this Agreement.

- 9.6. Compliance with Applicable Laws: Both NDA and RTF, its agents and assigns shall, at all times in the performance of its duties and obligations, comply with all applicable laws, statutes, ordinances, and rules.
- 9.7. Good Faith: Each party agrees to act in good faith and use their best efforts to comply with this Agreement and privately resolve issues or disagreements. Libelous statements issued to the media by either party may be considered grounds for termination of this Agreement. This shall not be construed as a limitation of any First Amendment rights of either party or their agents.
- 9.8. No Other Inducement: The making, execution and delivery of this Agreement by the Parties hereto has been induced by no representation, statement, warrantee or other agreement other than those as written herein.
- 9.9. Assignments: Neither party shall assign this Agreement or any rights, duties, or obligations hereunder without the prior written consent of the other Parties. Any unconsented assignment shall be null and void *ab initio*.
- 9.10. Successors: All of the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns. Any transfer or responsibilities from RTF to another entity shall be subject to written approval by NDA.
- 9.11. Further Assurances: The Parties agree to take such further action and execute such further documents and instruments as may be reasonably necessary in order to effectively carry out the terms of this Agreement and the intentions of the Parties hereto.
- 9.12. Entire Agreement: Each party acknowledges that they have read and understand this Agreement, that it constitutes the entire understanding between Parties, and agree to be bound by the terms hereof. This Agreement is likewise binding on the respective agents, legal representatives, successors and assigns of the Parties, if any.
- 9.13. Amendments: Any amendments to this Agreement must be reduced to writing and signed by the Parties hereto; amendments to associated SOPs must be reduced to writing and approved by the Parties hereto.
- 9.14. Consultation with Counsel: Each party acknowledges it has had the opportunity to consult with counsel prior to execution of this Agreement, and as such, acknowledges that he has been fully advised of each party's respective rights, duties and obligations.
- 9.15. Counterparts: This Agreement may be signed and delivered in separate counterpart originals. All such counterparts will be deemed to constitute one and the same instrument. Delivery of a counterpart may be effectuated by transmitting a signed signature page by hardcopy, e-mail PDF, or other electronic transmission means.
- 9.16. Authorization to Sign: Each individual signing the Agreement on behalf of an organization represents that they have authority to bind the principal as well as any agents and cooperators acting in furtherance of this Agreement.

IN WITNESS THEREOF, each of us acknowledge receipt of a copy of this Agreement and have entered into this Agreement on the date set forth below.

RETURN TO FREEDOM, INC.

Neda DeMayo, President
Nevada Tax ID#: _____

Dated: _____

NEVADA DEPARTMENT OF AGRICULTURE

Jim Barbee, Director

Dated: _____

APPROVED AS TO FORM AND CONTENT:

OFFICE OF THE ATTORNEY GENERAL
On behalf of the Nevada Department of Agriculture

Dennis L. Belcourt, Deputy Attorney General

Dated: _____